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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,715	11/17/2003	Glen J. Anderson	ACER-44976US1	2334

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EXAMINER	
HUYNH, BA	

ART UNIT	PAPER NUMBER
2179	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/714,715	ANDERSON, GLEN J.	
	Examiner	Art Unit	
	Ba Huynh	2179	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 March 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,5,6,8,10-13,15,16,18,20-23,26 and 28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3, 5, 6, 8, 10-13, 15,16,18,20-23,26,28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/27/09 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 5, 6, 8, 10-13, 15, 16, 18, 20-23, 26, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over US patent #6,211,857 (Tani et al).

- As for claims 1, 11, 21. Tani et al (hereinafter Tani) teach a computer implemented method and corresponding system ("a GUI design kit") for creating a graphical user interface element from a picture created by an artist (1:35-41) or from a drawing created by a computer (1:42-45, 2:61-66). Per Tani, the later is more desirable because the design results can be stored, easily retrieved and edited. However, it would have been obvious to one of skill in the art, at the time the invention was made,

to adopt Tani's teaching of creating GUI elements from pictures (hardcopy) created by the artist, since the picture is already prepared and readily available. Per Tani, actions are defined for the captured pictures to create graphical user interface elements (2:1-5, 2:67-3:2, 5:13-28). More than one drawing objects are created and positioned for scanning (2:46-51, fig 1). Figure 1 discloses a plurality of drawing objects overlaying a background. Tani's teaching of pictures created by an artist and then being displayed on a computer screen implies that the hard copy pictures are scanned to be displayed on the computer screen. Even if it is not, official notice is taken that implementation of creating of a hard copy of a picture and scan the picture to display on a computer screen is well known in the art and would have been obvious in light of Tani's teaching of generating computer picture (1:35-56). Tani fails to specifically teach using the created GUI element in the designing of a web page. However one of skill in the art would be readily recognized that web page design would have been an obvious field of use for the created GUI element since web page design requires the implementation of GUI elements for interaction.

- As for claims 2, 12, 22: The at least one user interface element includes at least one of a label, text box, scroll bar, button, group box, slider control, link and predefined element (2:18-23).

- As for claims 3, 13, 23. The at least one representation of the at least one user interface element is identified by at least one of color, shape, texture, size, border style and optical indicia (5:32-36).

- As for claims 5, 15: Tani teaches the method as described in claim 1, further

comprising prompting a user to enter data of a particular type related to the at least one user interface element, wherein the received data is used for creating the GUI element (5:25-28, 6:7-21).

- As for claims 6, 16: The additional information is entered by at least one of scanning, typing and data download (6:7-21).

- As for claims 8, 18, 26: Tani teaches that picture of the GUI element can be created by and artist or by a computer drawing program appear to implies that the picture can be created on paper or a plastic sheet, or on a magnetic medium. Even if it is not, it would have been obvious to one of skill in the art, in light of Tani, for having the picture created on paper, plastic sheet, or on a magnetic storage medium.

- As for claims 10, 20, 28: Tani fails to teach that the tangible object is selected from group consisting of a sticker, a magnetic object, and a removable plastic object which is subject to electrostatic forces. However it would have been obvious to one of skill in the art in picture drawing that picture can be drawn on any suitable surface including a sticker, a magnetic object, and a removable plastic object which is subject to electrostatic forces. Using pictures drawn on a sticker, a magnetic object, and a removable plastic object would have been obvious to one of skill in the art in view of Tani as long as the objects are scannable.

- As for claim 27: The at least one representation of the at least one user interface element is associated with an object capable of being positioned on the medium (2:8-16, 7:50-52, 16:59-63, fig. 1).

Response to Arguments

Applicant's arguments filed 10/30/08 have been fully considered but they are not persuasive.

Remarks:

In response to the argument that Tani does not teach the web page design kit, Tani's teaching of the artist's physical drawings and the program for creating graphical user interface elements from the drawing make up the GUI application design kit. The artist's drawings are on tangible media. Recall that Tani teaches conventional methods of creating an interactive program using 1) defined pictures prepared by an art design specialist (1:35-41), 2) using pictures prepared by a computer drawing program (1:42-67). The later is more desirable because the design results can be stored, easily retrieved and edited. Thus it is implied that pictures prepared by the design artist are not created on a computer screen but on tangible media. Tani's statement "a defined picture desired to be displayed on the screen is prepared… by an art design specialist" appears to imply scanning of the hardcopy picture designed by the art design specialist. Even if it is not, implementation of creating a hard copy of a picture and scanning the picture to display on a computer screen is well known in the art and would have been obvious in light of Tani's teaching.

The applicant further argues that Tani does not teach the steps "positioning at a desired location at least one tangible object representing at least one user interface element on a tangible background medium to create a desired web page appearance". In response to the argument, the physical picture prepared by the artist ("tangible object") specialist is place on a desired location of a scanner ("tangible background") to create a scanned copy of the picture. In addition, Tani's

figure 1 discloses a plurality of drawing objects overlaying a background image (e.g., the paper medium).

Tani fails to teach that the tangible object is selected from group consisting of a sticker, a magnetic object, and a removable plastic object which is subject to electrostatic forces. However it would have been obvious to one of skill in the art in picture drawing that picture can be drawn on any suitable surface including a sticker, a magnetic object, and a removable plastic object which is subject to electrostatic forces. Using pictures drawn on a sticker, a magnetic object, and a removable plastic object would have been obvious to one of skill in the art in view of Tani as long as the objects are scannable. In response to applicant's argument that the examiner's conclusion of obviousness is conclusory, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Also, it has been decided that:

"Common sense teaches . . . that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle…A person of ordinary skill is also a person of ordinary creativity, not an automaton." KSR, 127 S. Ct. at 1742, 82 USPQ2d at 1397.

"In United States v. Adams, …[t]he Court recognized that when a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result." KSR Int'l v. Teleflex Inc., 82 USPQ2d at 1395.

"Analysis of whether the subject matter of a claim would have been obvious need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." KSR Int'l Co. v. Teleflex, Inc., 127 S. Ct. 1727, 1740-41, 82 USPQ2d 1385, 1396

(2007) quoting In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336-37 (Fed. Cir. 2006); Also, as clarified in KSR, it's now apparent "obvious to try" may be an appropriate test in more situations than previously contemplated. KSR, 127 S. Ct. 1727 at 1742, 82 USPQ2d at 1397 (2007).

In this case, pictures drawn on a sticker, a magnetic object, and a removable plastic object are useful sources of available pictures. The pictures can be scanned to generate the webpage as any other drawing pictures on any other scannable medium.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ba Huynh whose telephone number is (571) 272-4138. The examiner can normally be reached on Mon - Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 571-272-4847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ba Huynh
/Ba Huynh/
Primary Examiner, Art Unit 2179